



**THE**

# **JAMMU & KASHMIR GOVERNMENT GAZETTE**

Vol. 129] Srinagar, Thu., the 15th Sept., 2016/24th Bhad., 1938. [No. 24

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## **PART I-A**

### **Jammu & Kashmir Government–Orders**

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HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

Notification

No. 283 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Tariq Ahmad Hajam S/o Mr. Mohammad Anwar Hajam R/o Koil Tengpora, Pulwama vide Notification No. 883 dated 22-12-2014 has been declared as absolute/final.

By order.

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Notification

No. 284 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Ms. Arsheeda Bashir D/o Mr. Bashir Ahmad Bhat R/o Nund Reshi Colony, Bemina, Srinagar vide Notification No. 1143 dated 23-02-2015 has been declared as absolute/final.

By order.

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Notification

No. 285 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Ms. Nishu Kanth D/o Mr. Bushan Lal Kanth

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R/o Kralgund, Handwara, District Kupwara A/P Lane No. 20, Block 108, Flat No. 23, Jagti Colony, Nagrota, Jammu vide Notification No. 989 dated 01-01-2015 has been declared as absolute/final.

By order.

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Notification

No. 286 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Yasser Farooq Khan S/o Mr. Mohd Farooq Khan R/o House No. 9/2, Haiderpora, Janipur, Jammu vide Notification No. 1101 dated 19-03-2014 has been declared as absolute/final.

By order.

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Notification

No. 287 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Ms. Vasundhara Sharma D/o Mr. Nishi Kant Khajuria R/o 14/2, Shiva Enclave, Pamposh Colony, Janipur, Jammu vide Notification No. 797 dated 01-03-2013 has been declared as absolute/final.

By order.

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Notification

No. 288 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Ms. Amrita Rana D/o Mr. Jaswant Singh Rana R/o H. No. 9, Sector-D, Exten. Friends Colony, Sainik Colony, P/O Chowadhi, Jammu vide Notification No. 475 dated 05-10-2010 has been declared as absolute/final.

By order.

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Notification

No. 289 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Yassar Mushtaq S/o Mr. Mushtaq Ahmed R/o Maitra Chandrog, Tehsil and District Ramban A/P Dalpatian Peer Mitha, Jammu vide Notification No. 544 dated 13-10-2014 has been declared as absolute/final.

By order.

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Notification

No. 290 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Lokesh Chander Sharma S/o Mr. Rajinder Kumar Sharma R/o Village Bera Batta (Matta), Tehsil and District Kishtwar vide Notification No. 169 dated 23-05-2008 has been declared as absolute/final.

By order.

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Notification

No. 291 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Dawood Khan S/o Mr. Naseer Ahmad Khan R/o Pinjoora, Shopian vide Notification No. 864 dated 19-12-2014 has been declared as absolute/final.

By order.

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Notification

No. 292 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Karan Bijyal S/o Mr. Mool Rar R/o Gonika,

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Doda vide Notification No. 824 dated 24-12-2013 has been declared as absolute/final.

By order.

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Notification

No. 293 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Ratish Mahajan S/o Mr. Ramesh Mahajan R/o H. No. 11, Lane-2, Indra Colony, Janipur, Jammu vide Notification No. 295 dated 23-05-2014 has been declared as absolute/final.

By order.

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Notification

No. 294 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Ms. Rasheeda Shaheen D/o Mr. Ghulam Nabi Janwari R/o H. No. 14, New Colony, Lal Mandi, Wazir Bagh, Srinagar vide Notification No. 299 dated 23-07-2015 has been declared as absolute/final.

By order.

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Notification

No. 295 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Basharat Rasool Mir S/o Mr. Ghulam Rasool Mir R/o Mirakabad, Shalimar, SKUST Road, North, Srinagar vide Notification No. 688 dated 29-12-2015 has been declared as absolute/final.

By order.

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Notification

No. 296 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr./Ms. Zeenat Gaffar S/o/D/o Mr. Abdul Gaffar R/o Buchwara, Dalgate, Srinagar C/o Umer Medicate, Buchwana, Dalgate, Srinagar vide Notification No.693 dated 30-12-2015 has been declared as absolute/final.

By order.

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Notification

No. 297 Dated 25-04-2016.

Provisional admission as an Advocate granted under the Advocates Act, 1961 in favour of Mr. Sanjeev Kumar Bhandari S/o Mr. Sat Paul Bhandari R/o Ward No. 3, Nagri Parole, Kathua vide Notification No. 279 dated 23-07-2013 has been declared as absolute/final.

By order.

(Sd.) MOHAMMAD YASIN BEIGH,

Joint Registrar (Admn.).



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## **PART I—B**

### **Jammu and Kashmir Government—Notifications.**

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GOVERNMENT OF JAMMU AND KASHMIR,  
CIVIL SECRETARIAT—REVENUE DEPARTMENT.

Notification No. 21-Rev. (LAJ) of 2016

Dated 05-04-2016.

Whereas, the land, specifications whereof are given in Annexure “A” to this notification, is required for Composite Bund/Border Fencing (135 Feet Wide Strip) along with Indo Pak Border by Border Security Force ; and

Whereas, on the basis of an indent placed by Inspector General, Border Security Force vide No. BS/Fence/135/Feet/ft(J)/Engg/13/9719-21 dated 22-12-2013, duly endorsed by Home Department vide No. Home/Land-Acq/39/2015/1098 dated 03-03-2015, a notification under section 4(1) was issued by Collector, Land Acquisition (SDM), Marh

vide No. SDM/M/LH/Acq/135-feet/2015-16/33-40 dated 20-04-2015 for land measuring 193 Kanals, 03 Marlas situated at Village Chinore, Tehsil Marh, District Jammu ; and

Whereas, the Collector, Land Acquisition (SDM), Marh vide his letter No. SDM/M/2015-16/Esstt/150 dated 20-06-2015 reported that the notification issued by him under section 4(1) of the J&K State Land Acquisition Act, was served upon the interested persons for filing objections, if any, to the proposed acquisition but no objection was received within the stipulated period as required under sections 5&5-A of Land Acquisition Act ; and

Whereas, the report furnished by Collector, Land Acquisition (SDM), Marh vide letter to above, duly endorsed by Deputy Commissioner, Jammu vide No. DCJ/LA/BF-135 ft/Chinore/2015-16/329-31 dated 03-08-2015 read with DCJ/LA/BF-135 ft/Chinore/2015-16/571-73 dated 13-12-2015, Divisional Commissioner, Jammu vide Letter No. 502/2375/Acq/135 ft/Bdr-Fencing/Chinore/J/15/1508-10 dated 14-08-2015 read with No. 502/2375/Acq/135 ft/Bdr-Fencing/Chinore/J/15/2135-39 dated 23-11-2015 and Financial Commissioner (Revenue), J&K vide his No. FC-LS/LA-4406/2015 dated 29-12-2015, has been examined and it has been found that the land owners did not file any objection to the proposed acquisition ; and

Whereas, the Government is satisfied that the land particulars whereof are mentioned in Annexure “A” to this notification, is required for public purposed i. e. for Composite Bund/Border Fencing (135 Feet Wide Strip) along with Indo Pak Border by Border Security Force.

Now, therefore, in pursuance of section 6 of the J&K State Land Acquisition Act, Samvat 1990, it is declared that the land measuring 193 Kanals, 03 Marlas situated at Village Chinore, Tehsil Marh, District Jammu details whereof are indicated in Annexure “A” to this notification is required for public purposes viz. for Composite Bund/Border Fencing (135 Feet Wide Strip) along with Indo Pak Border by Border Security



Force. Further, the Collector, Land Acquisition (SDM), Marh is directed under section 7 of the said Act to take order for acquisition of the said land after giving prescribed notice to the interested person(s) as required under the Land Acquisition Act/Rules.

However, the Collector concerned shall be personally responsible for identification and proper title verification of all types of land involved in the case and apportionment of compensation amongst all the interested persons/rightful claimants in accordance with the relevant laws/rules in force, while making the award.

(Sd.) MUHAMMAD AFZAL, IAS,

Secretary to the Government,  
Revenue Department.

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*Annexure 'A' to Notification No. 21-Rev. (LAJ) of 2016  
dated 05-04-2016.*

District	Tehsil	Village	Kh. Nos.	Area
1	2	3	4	5
Jammu	Jammu	Chinore		K. M.
			303 M	16-11
			302 M	01-15
			301 M	03-02
			300 M	02-06
			299 M	04-04
			298 M	02-14
			297 M	05-10
			290 M	01-18

1	2	3	4	5
				K. M.
			291 M	02-00
			292 M	02-05
			287 M	02-03
			283 M	03-14
			281 M	02-12
			280 M	00-14
			282 M	03-11
			272 M	01-02
			271 M	00-02
			240 M	05-15
			240/1 M	05-07
			239 M	02-01
			241 M	00-03
			238 M	00-16
			237 M	01-10
			243 M	01-05
			242 M	00-14
			244 M	00-08
			236 M	19-14
			235 M	04-08
			250 M	31-14

1	2	3	4	5
				K. M.
			233 M	08-15
			232 M	00-04
			231 M	03-07
			228	04-01
			56 M	22-02
			54 M	00-12
			53 M	15-02
			51 M	09-02
			Total	193-03

GOVERNMENT OF JAMMU AND KASHMIR,  
CIVIL SECRETARIAT—REVENUE DEPARTMENT.

Notification No. 20-Rev. (LAK) of 2016

Dated 01-04-2016.

Whereas, the land, specifications whereof are given in Annexure “A” to this notification, is required for expansion of Fruit and Vegetable Mandi at Villages Prichoo and Gangoo, Tehsil and District Pulwama ; and

Whereas, on the basis of an indent placed by Director, Horticulture (P&M), Srinagar vide No. DHPM/701/2015/3628-30 dated 09-09-2015, a notification under section 4(1) was issued by Collector,

Land Acquisition (ACR), Pulwama vide No. DCP/LA/2015/747-53 dated 28-09-2015 for land measuring 14 Kanals, 18 Marlas in Village Prichoo and 35 Kanals 14 Marlas in Village Gangoo (total land measuring 50 Kanals 12 Marlas), Tehsil and District Pulwama for expansion of Fruit and Vegetable Mandi ; and

Whereas, the notification issued by the Collector, Land Acquisition (ACR), Pulwama under section 4(1) of the J&K State Land Acquisition Act, was served upon the interested persons for filing objections ; and

Whereas, the Collector, Land Acquisition (ACR), Pulwama vide his letter No. DCP/LA/2015/801-803 dated 19-10-2015 has informed that some objections had been received within the stipulated period under section 5-A of the land Acquisition Act ; and

Whereas, the report furnished by Deputy Commissioner, Pulwama vide letter No. DC/LA/2015/846-848 dated 04-11-2015, has been examined and it has been found that the land owners demanded much higher rates and some of them did not agree to part with their land as well ; and

Whereas, the case was placed before the District Private Negotiation Committee on 21-09-2015 for settlement of rates, but the land owners remained adamant on their demand. Accordingly, the Committee decided to settle the case under compulsory mode ; and

Whereas, the Government is satisfied that the particulars whereof are mentioned in Annexure “A” to this notification, is required for expansion of Fruit and Vegetable Mandi at Village Prichoo and Gangoo, Tehsil and District Pulwama.

Now, therefore, in pursuance of section 6 of the J&K State Land Acquisition Act, Samvat 1990, it is declared that the land measuring 14 Kanals 18 Marlas in Village Prichoo and 35 Kanals 14 Marlas in Village Gangoo (total land measuring 50 Kanals 12 Marlas), Tehsil and District Pulwama for expansion of Fruit and Vegetable Mandi, details whereof are indicated in Annexure “A” to this notification, is required

for public purposes viz. for expansion of Fruit and Vegetable Mandi. Further, the Collector, Land Acquisition (ACR), Pulwama is directed under section 7 of the said Act to take order for acquisition of the said land after giving prescribed notice to the interested person(s) as required under the Land Acquisition Act/Rules.

Since, there is urgency involved in the matter, in pursuance of section 17 of the J&K State Land Acquisition Act, Samvat 1990. it is ordered that on expiry of fifteen days from the date of publication of notification under section 9(2) of the said Act, the Collector, Land Acquisition (ACR), Pulwama, will take possession of the aforementioned land situated at Village Prichoo and Gangoo, Tehsil and District Pulwama required for public purposes, subject to the fulfilment of conditions prescribed under section 9(2) and section 17-A of the J&K State Land Acquisition Act and Rule 63 of the J&K Land Acquisition Rules.

However, the Collector concerned shall be personally responsible for proper title verification of all types of land involved in the case, identification of all the interested persons/rightful claimants and apportionment of compensation thereof in accordance with the relevant laws/rules in force, while making the award.

By order of the Government of Jammu and Kashmir.

(Sd.) MUHAMMAD AFZAL, IAS,

Secretary to the Government,  
Revenue Department.

*Annexure 'A' to Notification No. 22-Rev. (LAK) of 2016  
dated 01-04-2016.*

District	Tehsil	Village	Survey Nos.	Area
1	2	3	4	5
Pulwama	Pulwama	Prichoo	687	K. M. 05-12

1	2	3	4	5
				K. M.
			688 min	04-00
			689 min	03-05
			690 min	02-01
			Total	14-18
		Gangoo	558 min	04-05
			559 min	01-09
			560 min	12-17
			561 min	03-10
			562 min	00-10
			733 min	05-10
			600 min	02-05
			602 min	01-15
			611 min	01-00
			612 min	00-18
			619 min	00-05
			620 min	01-10
			Total	35-14
		G. Total		50-12



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**PART II—A**

**Orders by Heads of Departments.**

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**CHARGE REPORTS**

In compliance to Government Order No. 553-Home of 2016 dated 08-09-2016, the undersigned does hereby assume the charge of the Office of Director General of Police, Prisons today on September, 12, 2016 F. N.

(Sd.) S. K. MISHRA, IPS,

Director General of Police,  
Prisons, J&K, Srinagar.

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In compliance to Government Order No. 216-FST of 2016 dated 12-08-2016 issued vide endorsement No. FST/SER 64/2016 dated 12-08-2016, we the undersigned handover and takeover the charge of the post of Director, Forest Protection Force, J&K today on 1st of September, 2016 F. N.

(Sd.) SURESH KUMAR GUPTA, IFS,

Relieved Officer.

(Sd.) RAJEEV KUMAR TIWARI, IFS,

Relieving Officer.





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**PART II—B**

**Notifications, Notices and Orders by Heads of Departments.**

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GOVERNMENT OF JAMMU AND KASHMIR,  
DEPARTMENT OF COMMERCIAL TAXES,  
EXCISE AND TAXATION COMPLEX,  
RAIL HEAD JAMMU-180012

Notification No. 02 of 2016

Dated 31-03-2016.

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In exercise of the powers conferred by sub-rule (e) of Rule 15 of the Jammu and Kashmir General Sales Tax Rules, 1962, I hereby direct that the returns along with payment under J&K General Sales

Tax Act, 1962 from 1st Quarter 2016-17 and onwards shall be filed electronically by the registered dealers having a gross annual turnover of Rs. 20.00 lacs and above.

(Sd.) HILAL AHMED, IAS,

Commissioner, Commercial Taxes,  
J&K.

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GOVERNMENT OF JAMMU AND KASHMIR,  
DEPARTMENT OF COMMERCIAL TAXES,  
EXCISE AND TAXATION COMPLEX,  
RAIL HEAD JAMMU-180012

Notification No. 03 of 2016

Dated 31-03-2016.

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In exercise of the powers conferred by sub-rule (9) of Rule 28 of the Jammu and Kashmir Value Added Tax Rules, 2005, I hereby direct that the returns along with payment under J&K Value Added Tax Act, 2005 from 1st Quarter 2016-17 and onwards shall be filed electronically by the registered dealers having a gross annual turnover of Rs. 20.00 lacs and above.

(Sd.) HILAL AHMED, IAS,

Commissioner, Commercial Taxes,  
J&K.

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GOVERNMENT OF JAMMU AND KASHMIR,  
DEPARTMENT OF COMMERCIAL TAXES,  
EXCISE AND TAXATION COMPLEX,  
RAIL HEAD JAMMU-180012.

Notification No. 01 of 2016

Dated 31-03-2016.

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In exercise of the powers conferred by sub-rule (bb) of Rule 6 of the Central Sales Tax (Jammu and Kashmir) Rules, 1958, I hereby direct that the returns along with payment under Central Sales Tax Act, 1956 from 1st Quarter 2016-17 and onwards shall be filed electronically by the registered dealers having a gross annual turnover of Rs. 20.00 lacs and above.

(Sd.) HILAL AHMED, IAS,

Commissioner, Commercial Taxes,  
J&K.

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GOVERNMENT OF JAMMU AND KASHMIR,  
OFFICE OF THE COLLECTOR, LAND ACQUISITION  
(ACR), RAMBAN.

Corrigendum

On account of non-publication of notice in the leading newspapers by this office bearing No. 437-46 dated 07-12-2015, under sections 9, 9-A of the Land Acquisition Act, 1990 Svt. Notice is hereby again given to all interested persons that the Government of J&K intends to take possession of land measuring 11 Marla's situated in Village Sujmatna (Makerkote), Tehsil Pogal Paristan (Ukhral), District Ramban for construction of "Makerkote-Ukhral road" as per particulars appended to this notice for which notification No. 17/DCR of 2015-16 dated 11-09-2015 has been issued by the Deputy Commissioner, Ramban vide endorsement No. DC/LA/Rbn/15/196-103 dated 11-09-2015 under sections 6&7 of the Land Acquisition Act, (Svt.) 1990 (hereinafter Act) read with SRO-235 dated 11-08-2009 for acquiring of land.

Now, before taking over the possession of land and payment of compensation all the interested persons are called upon to appear

before the undersigned on 19-02-2016 at 11.00 A. M. at D. C. Complex, Ramban and state the nature of their respective interest in the land, the amount and particulars of their claims to compensation for such interest, and their objections (if any) to the quantum and measurement of land. It is required that all such claims and objections are made in writing.

**Exacutive Engineer, PWD (R&B) Division, Ramban** (Indenting Department) is also requested to send his authorized representative before the undersigned on above said date, time and venue to putforth his objection, if any, to the measurement made and to the amount of the tentative compensation that may be assessed.

It may be taken into notice by all that no claim or objection whatsoever will be entertained after above said date.

Appendix/Particulars of land

Village Sujmatna (Makerkote), Tehsil Pogal Paristan (Ukhral), District Ramban.

Name of Owner	Name of the cultivator	Name of possession holder on spot	Khasra Nos.	Area
				K. M.
Ghulam Mohd	Khud Kasht	Khud Kasht	1198/380	00-05
S/o Samad			379/1	00-06
Bahru sakinan				
deh			Grand Total	00-11

Given under my hand and seal on 04 day of February 2016 at Ramban.

(Sd.) VEVAIK PURI, KAS,

Collector,  
Land Acquisition (ACR),  
Ramban.

GOVERNMENT OF JAMMU AND KASHMIR,  
OFFICE OF THE COLLECTOR, LAND ACQUISITION  
(SUB-DIVISIONAL MAGISTRATE), RAMNAGAR.

Notification under section 4 (1) of Land Acquisition Act No. X  
of 1990 Samvat.

In exercise of the powers conferred upon me under sub-section (1) of section 4 of the Land Acquisition Act, 1990 BK, I, Anshul Garg, I. A. S., Collector, Land Acquisition (Sub-Divisional Magistrate), Ramnagar do hereby notify the land particulars of which are given below, likely to be needed for public purpose namely for construction of Katwalt to Gundi at Village Ressain.

Objection, if any, to the acquisition of the said land will be received by undersigned within fifteen (15) days from the date of publication of this notification.

Specification of land				
District	Tehsil	Village	Khasra Nos.	Area
				K. M.
Udhampur	Ramnagar	Ressain	353/354	09-03
			442/257	04-12
			441/257	01-07
			448/256	05-03
			Total	

(Sd.) ANSHUL GARG, I. A. S.,

Collector, Land Acquisition,  
Ramnagar.

GOVERNMENT OF JAMMU AND KASHMIR,  
OFFICE OF THE COLLECTOR, LAND ACQUISITION  
(SUB-DIVISIONAL MAGISTRATE), RAMNAGAR.

Notification under section 4 (1) of Land Acquisition Act No. X  
of 1990 Samvat.

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In exercise of the powers conferred upon me under sub-section (1) of section 4 of the Land Acquisition Act, 1990 BK, I, Anshul Garg, I. A. S., Collector, Land Acquisition (Sub-Divisional Magistrate), Ramnagar do hereby notify the land particulars of which are given below, likely to be needed for public purpose namely for construction of Dhaler Morh to Amroh at Village Incha.

Objection, if any, to the acquisition of the said land will be received by undersigned within fifteen (15 days) from the date of publication of this notification.

Specification of land

District	Tehsil	Village	Khasra Nos.	Area
1	2	3	4	5
Udhampur	Ramnagar	Incha	162 min	K. M. 00-08
			162 min	00-15
			163 min	00-17
			166 min	01-04
			155 min	01-16
			154/1 min	02-05

1	2	3	4	5
				K. M.
			156 min	01-03
			157 min	02-10
			600/148 min	00-05
			146 min	00-15
			142 min	01-06
			139 min	00-16
			135 min	01-13
			135 min	00-06
			135 min	00-06
			135 min	01-15
			133 min	01-12
			131 min	02-04
			391/239 min	01-11
			391/239 min	01-15
			391/239 min	02-11
			125 min	01-04
			122 min	02-00
			121 min	01-10
			120 min	00-19
			626/410/312 min	03-00
			408/109 min	01-03
			111 min	01-10
			406/104 min	01-04
			406/104	10-01

1	2	3	4	5
				K. M.
			88 min	03-00
			87 min	02-11
			96 min	00-02
			588/28 min	04-00
			30 min	01-12
			30 min	00-10
			32 min	00-10
			31 min	00-10
			33 min	01-01
			30 min	01-01
			35 min	00-09
			35 min	01-00
			404/66 min	01-15
			404/66 min	04-11
			404/66 min	01-06
			404/66	01-08
			404/66 min	00-05
			Total	75-15

(Sd.) ANSHUL GARG, I. A. S.,

Collector, Land Acquisition  
Ramnagar.

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GOVERNMENT OF JAMMU AND KASHMIR,  
OFFICE OF THE COLLECTOR, LAND ACQUISITION  
(SUB-DIVISIONAL MAGISTRATE), RAMNAGAR.

Notification under section 4 (1) of Land Acquisition Act No. X  
of 1990 Samvat.

In exercise of the powers conferred upon me under sub-section (1) of section 4 of the Land Acquisition Act, 1990 BK, I, Anshul Garg, I. A. S., Collector, Land Acquisition (Sub-Divisional Magistrate), Ramnagar do hereby notify the land particulars of which are given below, likely to be needed for for public purpose namely for construction of Dhaler Morh to Amroh Phase-II at Village Amroh.

Objection, if any, to the acquisition of the said land will be received by undersigned within fifteen (15 days) from the date of publication of this notification.

Specification of land

District	Tehsil	Village	Khasra Nos.	Area
1	2	3	4	5
				K. M.
Udhampur	Ramnagar	Amroh	78 min	00-05
			78 min	01-05
			75 min	00-17
			635/83/1	00-19
			659/83/1 min	00-17
			362 min	02-17
			651/357	00-19
			365 min	01-07
			365 min	01-17
			365 min	00-04
			365 min	00-05

1	2	3	4	5
				K. M.
			365 min	01-06
			365 min	00-12
			365 min	00-12
			384 min	04-04
			387 min	00-06
			384 min	00-06
			387 min	00-13
			387 min	00-16
			384 min	00-16
			648/357 min	04-10
			587/494 min	00-13
			470 min	01-17
			469 min	01-12
			469 min	01-01
			484 min	00-12
			490 min	00-03
			490 min	00-03
			458 min	00-09
			458 min	01-15
			458 min	00-04
			458 min	00-04
			458 min	01-09
			453 min	00-16
			453 min	00-19

1	2	3	4	5
				K. M.
		655/574/495	min	02–11
		654/574/495	min	19–15
			Total	59–16

(Sd.) ANSHUL GARG, I. A. S.,  
Collector, Land Acquisition,  
Ramnagar.

GOVERNMENT OF JAMMU AND KASHMIR,  
OFFICE OF THE COLLECTOR, LAND ACQUISITION  
(SUB-DIVISIONAL MAGISTRATE), RAMNAGAR.

Notification under section 4 (1) of Land Acquisition Act, No. X  
of 1990 Samvat.

In exercise of the powers conferred upon me under sub-section (1) of section 4 of the Land Acquisition Act, 1990 BK, I, Anshul Garg, I. A. S., Collector, Land Acquisition (Sub-Divisional Magistrate), Ramnagar do hereby notify the land particulars of which are given below, likely to be needed for for public purpose namely for construction of Dhaler Morh to Amroh Phase-I partially at Village Amroh.

Objection, if any, to the acquisition of the said land will be received by undersigned within fifteen (15 days) from the date of publication of this notification.

Specification of land

District	Tehsil	Village	Khasra Nos.	Area
1	2	3	4	5
				K. M.
Udhampur	Ramnagar	Amroh	76 min	00–08
			74 min	00–04

1	2	3	4	5
				K. M.
			76 min	00-02
			74 min	00-02
			76 min	00-03
			78 min	00-03
			78 min	00-02
			78 min	00-01
			80 min	00-01
			78 min	00-07
			78 min	00-02
			78 min	00-09
			Total	02-04

(Sd.) ANSHUL GARG, I. A. S.,

Collector, Land Acquisition,  
Ramnagar.

#### Correction of Name

The undersigned is in possessing of PAN Card bearing No. AABPQ5351R with my name written as FARHAT HUSSIAN QADRI and father name GULAM HUSSIAN QADRI whereas as per official records the spelling of my name is FARHAT HUSSAIN QADRI and my father name GH. HASSAIN QADRI. Objections, if any, may be conveyed to the concerned authority within seven days from the publication if this notice.



**THE  
JAMMU AND KASHMIR GOVERNMENT GAZETTE**

Vol. 129] Srinagar, Thu., the 15th Sept., 2016/24th Bhad., 1938. [ No. 24

Separate paging is given to this part in order that it may be filed as a  
separate compilation.

**ADVERTISEMENTS-C**

GOVERNMENT OF JAMMU AND KASHMIR,  
DIRECTORATE GENERAL, FIRE AND EMERGENCY SERVICES,  
J&K, SRINAGAR.

GIST of e-NIT No. 09 of 2016

Dated 06-09-2016.

For and on behalf of the Governor of J&K State, e-Tenders are invited from the original manufacturers or their authorized dealers, having proper authorization of the manufacturer to quote against this tender for supply of uniform items (indicated in the detailed SBD and BoQ) :—

S. No.	Particulars	Earnest money	Cost of tender document
1.	Supply various of uniform items	₹ 2% of the value of quoted items in the shape of CDR	(a) General ₹ 2000.00 (b) For SSI Units as per Government Policy.
01.	Date of publishing of Tender Notice	06-09-2016.	
02.	Period of downloading of documents	From 6-9-2016 to 26-9-2016.	
03.	Date of submission of online documents	06-09-2016 to 26-09-2016 up to 1600 hours.	

- |                                     |   |
|-------------------------------------|---|
| 04. Date of submission of Hard Copy | 27-09-2016 up to 04.00 P. M.                            |
| 05. Date of Opening Tender          | 28-09-2016 at 1500 hours or subsequent convenient date. |

The tender documents along with other terms and conditions of the NIT and relevant documents can be downloaded from the State e-Procurement Portal [jktenders.gov.in](http://jktenders.gov.in). The tender shall be uploaded in electronic format on the State e-Procurement Portal [jktenders.gov.in](http://jktenders.gov.in). The bidders shall have to upload scanned copy of all necessary documents like CDR/PAN/TIN/Demand Draft (Tender Fee)/registration certificate duly renewed and hard copies thereof physically to tender receipting authority well before the date of opening of the bid. The cost of tender documents shall be in the form of Bank Draft drawn in favour of Accounts Officer, Fire and Emergency Services, J&K payable at Srinagar/Jammu and earnest money shall be pledged to Director General, Fire and Emergency Services, J&K. Cost of tender documents is non-refundable, whileas the earnest money is refundable.

(Sd.) .....

Accounts Officer,  
Fire and Emergency Services, J&K, Srinagar.

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GOVERNMENT OF JAMMU AND KASHMIR,  
OFFICE OF THE GENERAL MANAGER,  
RANBIR GOVERNMENT PRESS, JAMMU (TAWI)-180005.

#### Extension Short Term Tender Notice

Due to poor response, the date of receipt of the tenders invited vide this office Short Term Tender Notice No. RGPI/78-81 dated 30-07-2016, followed by extension vide No. RGPI/89-92 dated 22-08-2016, for the rate contract of Spare Parts of Colourgraph Machine No. 3<sup>II</sup> (Size 20"x30"), NBG-1, Single Colour Sheetfed Offset Machine Model SOM-136<sup>II</sup> is hereby extended up to 20-09-2016 till 11.00 A. M. The other terms and conditions shall remain unchanged.

(Sd.) F. H. QADRI,  
General Manager.

رجسٹرڈ نمبر جے کے۔ 33

# جموں و کشمیر گورنمنٹ گزٹ

جلد نمبر 129 - سرینگر - مورخہ 15 ستمبر 2016ء بمطابق 24 بھادرا 1938 ویروار - نمبر 24

## اشتہارات

از عدالت چیف جوڈیشل مجسٹریٹ شوپیان

سرکار بنام محمد مصروف حقہ ولد محمد شریف حقہ ساکنہ رانچی پیڑا پڑھاٹ

سندر بنی راجوری (ملزم)

علت نمبر 145 سال 2013ء ، تھانہ پولیس شوپیان

جرائم زیر دفعات : 341,323/RPC

وارنٹ گشتی عام زیر دفعہ 512 ضف

بخلاف ملزم : ملزام الصدر

حکم بنام : اہلکاران پولیس ریاست جموں و کشمیر۔

مقدمہ مندرجہ عنوان الصدر میں ملزم صدر عرصہ دراز سے غیر حاضر آرہا ہے اور اب عدالت ہذا کو اطمینان ہوا ہے کہ اُس کی دستیابی بطریق احسن ممکن نہیں ہے۔ لہذا آپ کو حکم و اختیار دیا جاتا ہے کہ جہاں کہیں بھی یہ ملزم دستیاب ہو اُس کو گرفتار کر کے عدالت ہذا میں بحراست ضابطہ پیش کیا جائے۔ تحریر 01-01-2016

سرکار بنام (1) محمد یوسف چوہان ولد سائی محمد چوہان ساکنہ ریشی نگری آڑہ  
(2) محمد قاسم کو لے ولد فیاض محمد کو لے ساکنہ سنگائی تھنہ منڈی راجوری (ملزمان)

علت نمبر 222 سال 2014ء، تھانہ پولیس شوپیان

جرم زید دفعہ : 379/RPC

وارنٹ گرفتاری زید دفعہ 512 ض ف بخلاف ملزمان الصدر

حکم بنام : اہلکاران پولیس ریاست جموں و کشمیر۔

مقدمہ مندرجہ عنوان الصدر میں ملزمان صدر عرصہ دراز سے غیر حاضر آرہے ہیں اور اب عدالت ہذا کو اطمینان ہوا ہے کہ اُن کی دستیابی بطریق احسن ممکن نہیں ہے۔ لہذا آپ کو حکم و اختیار دیا جاتا ہے کہ جہاں کہیں بھی یہ ملزمان دستیاب ہونگے اُن کو گرفتار کر کے عدالت ہذا میں بحراست ضابطہ پیش کیا جائے۔

تحریر 01-01-2016



سرکار بنام جاوید شاہ وغیرہ  
علت نمبر 410 سال 2010ء تھانہ پولیس شوپیان

جرم زیر دفعہ : 379/RPC

وارنٹ گشتی عام زیر دفعہ 512 ض ف

بخلاف ملزمان: (1) فاروق احمد لون ولد عبدالغنی لون ساکنہ چکرنور پورہ ترال۔

(2) نصیر احمد گنائی ولد غلام محمد گنائی ساکنہ خانقاہ مڈورہ ترال۔

حکم بنام : مجملہ اہلکاران پولیس ریاست جموں و کشمیر۔

مقدمہ مندرجہ عنوان الصدر میں ملزمان صدر عرصہ دراز سے غیر حاضر چلے آ رہے ہیں اور عدالت ہذا کو اطمینان ہے کہ ملزمان کی دستیابی بطریق احسن ممکن نہ ہے۔

لہذا آپ کو حکم و اختیار دیا جاتا ہے کہ جہاں کہیں بھی یہ ملزمان دستیاب ہونگے تو ان

کو گرفتار کر کے عدالت ہذا میں زیر حراست ضابطہ پیش کریں۔ تحریر 28-12-2015

دستخط : چیف جوڈیشل مجسٹریٹ شوپیان۔

از عدالت ایکسائز موبائل مجسٹریٹ جموں

سرکار بنام راجیو برال وغیرہ

پرچہ علت نمبر 142 سال 2010ء تھانہ پولیس جانی پور

جرائم زیر دفعات RPC 382/34

وارنٹ گشتی زیر دفعہ 512 ض ف

### بخلاف ملزم صدر

حکم بنام : اہلکاران پولیس ریاست جموں و کشمیر

معاملہ مندرجہ عنوان اُلصدر میں ملزم کو بارہا بذریعہ وارنٹ گرفتاری بلا ضمانتی طلب کیا گیا ہے۔ الا ملزم کی دستیابی نہ ہوئی ہے اور وارنٹ ہذا پر تعمیل آئی ہے کہ ملزم سوہن سنگھ ولد پرلا دستگھ قوم ہندو پیشہ ڈرائیور ساکنہ توپ شیر کھنیاں جموں۔ گھر سے فرار ہے اور روپوش ہو گیا ہے جس سے ملزم کی دستیابی بطریق آسانی مشکل ہے۔

لہذا ملزم کے خلاف کارروائی زیر دفعہ 512 ض ف بعمل لائی جا کر اہلکاران پولیس ریاست جموں و کشمیر کو حکم و اختیار دیا جاتا ہے کہ ملزم متذکرہ بالا جہاں کہیں بھی اندر حدود ریاست دستیاب ہو تو اُسے فوراً گرفتار کر کے عدالت ہذا میں پیش کریں۔

دستخط : ایکسائز موبائل مجسٹریٹ جموں۔



EXTRAORDINARY

REGD. NO. JK—33



**THE  
JAMMU & KASHMIR GOVERNMENT GAZETTE**

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Vol. 129] Srinagar, Mon., the 25th July, 2016/3rd Srav., 1938. [No. 16-8

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Separate paging is given to this part in order that it may be filed as a  
separate compilation.

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**PART II—B**

**Notifications, Notices and Orders by Heads of Departments.**

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GOVERNMENT OF JAMMU AND KASHMIR,  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
J&K, SRINAGAR.

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Present : Kossar Ahmad Qureshi, Presiding Officer

File No. 922/ITLC/14.

Date of Institution : 12-05-2014.

Date of Decision : 15-06-2016.

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In the case of :

Mohammad Amin Mir S/o Abdul Gani Mir R/o Drangbal, Pampore,  
Pulwama, Kashmir.

(Petitioner/Employee)

Versus

1. General Officer Commanding, HQ 15 Corps Q (Ops.) C/O 56 APO,  
Srinagar, Kashmir.

2. Commanding Officer, Col. 7 RR, Badami Bagh Cantonment, Srinagar, Kashmir, C/o 56 APO, Srinagar, Kashmir.
  3. Lt. C/o 7 RR (Punjab) Badami Bagh Contonment, Srinagar, Kashmir, C/o 56 APO, Srinagar, Kashmir.
  4. HQ. 31, Sub-Area Commander, Badami Bagh Contonment, Srinagar, Kashmir, C/o 56 APO, Srinagar, Kashmir.
  5. Director Defense Procurement Officer, Sanat Nagar, Srinagar, Kashmir.
- (Respondents/Employers)

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In the Matter of :—        Reference under sub-section (2) of section 2A of  
the Amendment of 2010 of I. D. Act, 1947.

Apperaring Counsel  
Mr. Shabir A. Budoo, Advocate for Petitioner  
Memo for Respondents

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**ORDER/AWARD**

The brief facts of the instant case are that the petitioner being permanent resident of the State of Jammu and Kashmir, came to be engaged by the Respondent No. 03 as Porter on contractual/daily wage basis from September, 2002 and after his engagement, the petitioner was smoothly working as Porter without any service break and also wages were paid to the petitioner on each and every month and the last paid wages were Rs. 4600/- per month which was earlier paid by cash and later from the year 2011, the same was credited in the Saving Bank Account of the petitioner running in State Bank of India, B/O Chinara Shopping Complex, Badami Bagh Cantonment, Srinagar, Kashmir and later from the year 2012, the said wages were credited in the account running in Post Office Branch lying in the premises of Respondent No. 04, Srinagar, Kashmir in his account No. 1464139. It is further stated that all of sudden, the Responants, in the month of January, 2013 restrained the petitioner from entering in the office

premises, by issuing instructions to the gate security officer and accordingly the petitioner was not allowed to enter into office premises since January, 2013 and thereafter did not allow the petitioner to perform his duty which the petitioner was performing since September, 2002 for the reason best known to them however the petitioner is not aware as to whether any order of disbanding of the petitioner from his services, has been passed by the Respondents or not nor any reasons or prior notice has been served upon the petitioner and ultimately the said illegal act of the Respondents constrained the petitioner to serve a legal notice to the Respondents on 30/01/2013 through Mr. Nazir Ahmad Beig, Advocate, J&K High Court, Srinagar, Kashmir and in response to the said legal notice, the Respondents have send a reply dated 21/02/2013 where through admitted that the petitioner was engaged as Porter but have wrongly mentioned that the petitioner was engaged since April, 2010 when in fact the petitioner has been engaged since September, 2002 however have mentioned in their reply that the petitioner has been disengaged w. e. f. December, 2012 and further have remained silent as to whether any formal order in this regard has been issued or not. After which the petitioner filed a petition before the Ld. Assistant Labour Commissioner, Srinagar on 26/03/2013 against the said disbanding of the petitioner from the services by the Respondents but the same was returned back by the Ld. Assistant Labour Commissioner, Srinagar for want of jurisdiction by observing that the Respondents are not falling within the definition of "Industry" and also for want of "appropriate Govt.". Thereafter the petitioner approached to the Ld. Assistant Labour Commissioner, Srinagar, Kashmir with a fresh application for initiating conciliation proceedings for resolving the industrial dispute between the petitioner/employee and Respondents/employer. Upon receiving the said fresh application, the Respondents were put to notice and filed their written objections to the said application by taking the same stand as was taken in the supra reply to the aforesaid legal notice and thereafter the Respondents did not turn up before the Ld. Assistant Labour Commissioner, Srinagar despite waiting for more than two to three months. It is further stated that despite lapse of said period of more than two to three months, the petitioner

directly without wasting further time, filed the instant reference petition on 12/05/2014, before this Tribunal, in view of the provisions of sub-section (2) of section 2A of the I. D. Act which confers right to the petitioner to file a reference petition directly before this Tribunal after the expiry of 45 days from the date of receipt of application by the Conciliation Officer and the same provision empowers this Tribunal to entertain and adjudicate upon the issues and claim, prayed for, in the said reference petition.

Upon receiving the instant reference petition, the same has been registered and thereafter the Respondents were put to notice who caused their appearance and filed their written objections on 26/11/2014, same has been placed on record and through their aforesaid written objections, the stand of the Respondents is that the petitioner was engaged by the Respondent No. 03 as Casual Porter with 7 RR during the period from April, 2010 to December, 2012 and his appointment was purely need basis as such the petitioner can neither be reinstated nor can be permanently absorbed.

The Respondents later have chosen not to appear, consequently, the Respondents have been set in ex parte on 29/01/2015 resultantly the petitioner was directed to lead evidence in ex parte. Upon which the petitioner in addition to his own, has also produced 04 witnesses total 05 witnesses on affidavits and the same have been placed on record. These 04 witnesses are Sajad Ahmad Mir, Adil Ali Malla, Mohammad Ashraf Dar and Mohammad Ishfaq Bhat. All of them have narrated the same story in their respective affidavits and corroborated the stand of the petitioner in its totality and thereafter on the submission of the petitioner, the right of producing more evidence of the petitioner was closed on 06/05/2015 and the instant reference has been fixed for final arguments.

Heard the petitioner and perused the whole record file and after considering the whole record file, I feel it necessary that before going through the issues involved in the reference, which are 1) whether the termination of the petitioner from his services, by the Respondent is justified ? and 2) Whether the relief prayed for in the reference can be granted or not ? It is

very necessary to go first through the two important issues which touching the basic requirements, for deciding the jurisdiction of this Tribunal for the instant reference. These are :—

1. Whether the Respondent's office, for the purpose of the dispute referred in this reference of the petitioner, is falling within the definition of the "Industry" under Industrial Dispute Act, 1947 ?
2. Whether the instant reference petition is maintainable in view of provisions of sub-section (2) of section 2A of the I. D. Act ?

These are the main legal issues which need to be considered by this Tribunal before adjudicating upon the factual issues referred to, in the instant reference petition.

So far as the first legal issue is concerned, i. e. whether the Respondent's office, for the purpose of the dispute referred to, in this reference of the petitioner, is falling within the definition of the "Industry" under Industrial Dispute Act, 1947 ? In response, I am of this opinion that the same depends upon the nature of the work done by the petitioner in the Respondent's office. If the work which was assigned to the petitioner i. e. the job of "Porter" is falling within the activity of the Government relatable to the sovereign function of the Government, then for the purpose of dispute referred to, in the instant reference petition, the Respondents are not falling within the definition of "Industry" in view of the Clause (6) of the Clause (i) of the definition of "Industry" laid down in section 02 under the Act otherwise, the Respondents are falling within the definition of "Industry" in view of the definition of "Industry" under the Act. Now to ascertain whether the nature of the job of "Porter" which the petitioner was assigned by the Respondents, is an activity relatable to the sovereign function of the Government or not ? In response, since the said job of "Porter" i. e. the Misc. Labour work e. g. gardening, watering plants and also to transport the essential commodities from one place to another in the Respondent's premises at Badami Bagh, required for human consumption, is not any activity relatable

in any way directly or indirectly to sovereign function of the Government but is purely a distribution of goods for human consumption. The Porter's job is totally different to all activities related to sovereign functions of the Government because for sovereign functions of the Government, all activities related to it, are permanent basis but not on need and requirement basis and since the Respondents in the present case in their aforesaid objections expressly and clearly stated that the job of Porter assigned to the petitioner is temporary basis and also need and requirement basis so there is no activity relatable to sovereign function of the Government on temporary and need basis. There are two kinds of activities done in the Respondents premises, one those activities which are directly related to protect the sovereignty of the Government or State and so far as these activities are concerned, the Respondents are not falling within the definition of "Industry" under the Act but so far as activities other than these related to protection of the sovereignty of the Government, like Porter job i. e. like petitioner's job, the same is not directly or indirectly the activity related to protecting the sovereignty of the State. So on these basis, for the purpose of the dispute referred to, in the instant reference, I am of this opinion that the Respondents are falling within the definition of "Industry" under the Act.

Now so far as the second issue is concerned i. e. whether the instant reference petition is maintainable in view of provisions of sub-section (2) of section 2A of the I. D. Act in view of I. D. Amendment Act, 2010 ? In response, I am of this opinion that since after verbal disbanding of the petitioner from his services, by the Respondent, the petitioner went pillar to post for redressal of his grievances against his verbal termination from his services. Initially the petitioner sent a legal notice to Respondents, thereafter approached the Ld. Assistant Labour Commissioner, Srinagar who initially returned back the said petition by stating that the Respondent is not falling within the definition of "Industry" and also want of appropriate Government and subsequently the petitioner again reapproached the said Ld. Assistant Labour Commissioner, Srinagar with a fresh application for redressal of his said grievances along with reply to the above said two queries which earlier



was raised by Ld. Assistant Labour Commissioner, Srinagar but at this time, after his satisfaction over reply to said two quarries, the Ld. Assistant Labour Commissioner, Srinagar initiated the proceedings by issuing a notice to the Respondents who later appeared and submitted their written objections to the said application and later chosen not to appear and subsequently when the Ld. Assistant Labour Commissioner, Srinagar failed to submit the failure report within the period of 45 days despite lapse of more than two/three months, the petitioner in view of above referred provision incorporated in the said Act by the Govt. of India in 2010 which is in force w. e. f. 15th day of September, 2010 by virtue of notification issued by Ministry of Labour and Employment, Notification No. S. O. 227(E) dated September 15, 2010 published in the Gazette of India, Extra. dated 15th September, 2010, P. I. No. 1928, the petitioner without wasting any further time presented the instant reference petition before this Tribunal on 12-05-2014. Under the said amended Act, 2010, this Tribunal has powers to entertain and receive a reference petition directly from the workman after expiry of 45 days, from the date of receipt of application by the Conciliation Officer of the appropriate Government.

Now since after the expiry of 45 days, a right accrued to the petitioner under the aforesaid amendment of 2010 to approach directly to this Tribunal with a reference petition but question here arises that whether the Ld. Assistant Labour Commissioner, Srinagar who acted as Conciliation Officer in the instant reference prior to the presentation of the instant reference before this Tribunal, has jurisdiction to act as Conciliation Officer in the instant matter the same depends upon whether the appropriate Govt. for the Respondent Industry is State Government or Central Government. In response, I am of this opinion that it is immaterial to this Tribunal whether the appropriate Govt. for the present reference is State Govt. or Central Govt. because under the Act, this Tribunal has jurisdiction for both State Govt. as well as Central Government. But for the maintainability of the present reference which has been presented before this Tribunal directly by the petitioner without reference by the appropriate Government because of the aforesaid

amendment of 2010 but the material point is that the instant reference moved under amendment of 2010, is only maintainable when this reference petition is moved after the expiry of 45 days from the date of receipt of the application by the Conciliation Officer of the appropriate Government, the same fact is proved from the record that the instant reference petition has been moved before this Tribunal after the expiry of 45 days from the date of receipt of the application from the petitioner, by the Ld. Assistant Labour Commissioner, Srinagar but the question here arises whether the Assistant Labour Commissioner, Srinagar has powers to intervene in the dispute referred to, in the instant reference petition, the answer is certainly 'yes' because had he not having such powers for the purpose of the dispute with reference to the instant petition, then he would not have entertained the said application nor he would have acted upon nor he would have issued a notice to the Respondents. Besides that undisputedly the Ld. Assistant Labour Commissioner and Dy. Labour Commissioner, Kashmir is the referral authority and also Conciliation Officers in view of THE INDUSTRIAL DISPUTES (JAMMU AND KASHMIR STATE) RULES, 1972 read with S. R. O. 405 of 1986 dated 18/07/1986 Labour, Stationary and Printing Department whileas the Chief Labour Commissioner (Central) and the Assistant Labour Commissioner (Central) are the only referral authorities but not Conciliation Officers for dispute related to industry for which the appropriate Government is Central Government. in view of sub-clause (f) of section 02 of the "INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957". In said rules framed by Central Government, there is no talk of appointment of Conciliation Officers but is only talk of Referral Authorities. Conciliation Officers and the Referral Authorities were earlier one and a same thing under the Central Industrial Dispute Rules, 1957 but prior to the amendment of 2010 however after the amendment of 2010 of the Act, the said two terms have now become two different terms because prior to said amendment of 2010, the reference petition can't be filed directly before this Tribunal without the reference by the Referral Central Government but after submitting the failure report to the appropriate Government by the Referral Authorities of the Central Government, under

aforesaid rules, the Referral Authorities of the Central Govt. were submitting failure reports to the Central Government and thereafter the appropriate Government was later were making reference of the Industrial Dispute, for adjudication, to this Tribunal that is why the said Referral Authorities were earlier acting as in dual capacity i. e. as Conciliation Officers as well as Referral Authorities under the Act but after the amendment of 2010, the said rules framed by Central Government has become partly redundant because after such amendment the making of reference of the Industrial Dispute by above said Referral Authorities are not now sine quo non (Pre requisite formality) for referring the Industrial Dispute to the Central Govt. who later would have referred the same to this Tribunal. None of the officer has been appointed as Conciliation Officer by the Central Government for the purpose of the amendment of 2010 of the Act especially for the purpose of amendment of sub-section (2) of section 2A of the I. D. Act. No doubt that the above said officers of the Labour Department of Central Government are Referral Authorities under the aforesaid rules but not Conciliation Officers for the purpose of amendment of sub-section (2) of section 2A of the Act incorporated by amendment of 2010 by Govt. of India. But despite of that the petitioner has approached the Ld. Assistant Labour Commissioner, Srinagar at the first instance and then to this Tribunal, after the expiry of more than 02/03 months from the date of receipt of the application by the Ld. Assistant Labour Commissioner as such the conditions laid down in the sub-section (2) of section 2A of the I. D. Act has been strictly complied with as such this Tribunal has jurisdiction under sub-section (2) of section 2A of the I. D. Act, to adjudicate upon the instant reference petition.

Now coming to the factual and substantial issues of the matter these are as under :—

- (1) Whether the termination of the petitioner from his services by the Respondent, is justified ?
- (2) Whether the relief prayed for in the reference can be granted or not ?

So far as the Issue No. 01 is concerned, I am of this opinion that since the petitioner being permanent resident of the State of Jammu and Kashmir, came to be engaged by the Respondent No. 03 as Porter on contractual/ daily wage basis from the September, 2002 and after his engagement, was smoothly working as Porter without any service break and also wages were paid to the petitioner each and every month and the last paid wages were Rs. 4600/- per month which was earlier paid by cash and later from the year 2011 the same was credited in the Saving Bank Account of the petitioner running in State Bank of India, B/O Chinar Shopping Complex, Badami Bagh Cantonment, Srinagar, Kashmir and later from the year 2012 the said wages were credited in the account running in Post Office Branch lying in the premises of Respondent No. 04, Srinagar, Kashmir in his Account No. 1464139 but later all of sudden, the petitioner has been disbanded verbally w. e. f. January, 2013 without assigning any reason and also without any prior notice, after which a legal notice was served upon the Respondents, to which, the Respondents have also replied the same, the copy of which is on record, where through admitted that the petitioner was engaged as Porter but have mentioned that the petitioner was engaged since April, 2010 and has been disengaged w. e. f. December, 2012 but have remained silent about the passing of any order of termination in writing. However since the petitioner's stand is that he has been engaged since September, 2002 and since then was continuously working there as Porter and in support of this, the petitioner has produced four witnesses, in addition to his own statement, all of them corroborated the stand of the petitioner. Now the question whether the petitioner was engaged since September, 2002 or from April, 2010 but it is admitted fact the petitioner has been disbanded w. e. f. December, 2012. Taking April, 2010 as date of engagement instead of September, 2002 as date of engagement, as such on the basis of such admission on the part of the Respondents, it shows that the petitioner has worked with the Respondents since April, 2010 to December, 2012 i. e. for more than 240 days for a calendar year as such under law a petitioner is a protected workman and a statutory right has accrued to him under section 25B and 25F of the

Act by virtue of which the petitioner cannot be disengaged from his services, by the Respondents, without following the due procedure laid down under section 25B and 25F of the Act and any dereliction from such set procedure makes the termination order illegal, and bad in the eyes of law as such being that legal position, the termination of the petitioner from his services, by the Respondent is illegal, invalid, unwarranted and uncalled for and against the principle of natural justice. In view of the above facts and circumstances, the petitioner has rendered services for more than 240 days in calendar year as required as such is protected workman in terms of Act as such since statutory obligation casts upon the Respondent to assign reasons for termination and to give prior notice to the petitioner before terminating his services, which has not been done in the present case but in turn the Respondent has terminated the services of the petitioner in gross violation of the provisions of section 25B and 25F of the Act. In support of this, the petitioner relied upon case law, Titled Ramesh Kumar V/s. State of Haryana at Para No.13 (AIR 2010 SC 683) in which the Hon'ble Apex Court held as under :—

“It is to be noted that in the case of termination of casual employee what is required to, be seen is whether a workman has completed 240 days in the proceeding twelve months or not. If sufficient materials are shown that workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of section 25F. The High Court failed to appreciate that in the present case appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances, his termination was illegal”.

Since there is nothing sustainable accepting the averment that the petitioner had left the service at his own as such from the above referred provision and also the above referred Judgment of the Hon'ble Apex Court, I reached on this conclusion that the termination of the petitioner from his

services, by the Respondents, is illegal, invalid, unwarranted and uncalled for and against the principle of natural justice. Therefore, the termination of the petitioner by Respondents, is hereby set aside and Respondents are directed to reinstate the petitioner forthwith.

Now coming to the Issue No. 02, the Issue No. 02 was dependent upon the Issue No. 01 and since for the aforesaid reasons the termination of the petitioner from his services, by the Respondents, has been declared as illegal, invalid, unwarranted and uncalled for and against the principle of natural justice, and has been ordered to be reinstated forthwith and since the petitioner is fighting for his reinstatement from last 04 years before different forums and this Tribunal and since the petitioner has stated that he is not employed anywhere during this period and in support of this, the petitioner has furnished an affidavit to that extent, to this Tribunal and more so since the petitioner has suffered a lot during this long period of 04 years during which the petitioner not only suffered financially but also mental agony as such under these peculiar circumstances, the petitioner is entitled for all full back wages since his termination which the petitioner is entitled under law, relying upon the Judgment of Hon'ble Apex Court Titled Hindustan Tin Works V/s. Its Employees (AIR 1979 S. C. 75) in which the Hon'ble Apex Court in para No. 09, 10 and 11 held as under :—

“It is no more open to debate that in the field of Industrial Jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of Common Law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with certainty of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus

the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period, the workman sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied to back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to be full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted letigative activity of the employer. If the employer terminates the service, the service illegally and the termination is motivated as in this case ; viz. to resist the workman's demand for revision of wages, termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect..... In this very nature of things there cannot be a strait jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage, the Tribunal will exercise its discretion keeping in view all the relevant circumstances.”

For the foregoing reasons, the issue No. 02 is also decided in favour of the petitioner and against the Respondents as such the petitioner is entitled to all full back wages including the period from his termination till the petitioner resumes his services with all benefits.

Accordingly the Respondents are directed to reinstate the petitioner forthwith and with a further direction to Respondents to pay the aforesaid full back wages in favour of the petitioner within a period of three months failing which thereafter the Respondents have to pay the said full back wages to the petitioner along with interest @ 08% till final realization.

The reference petition filed by the petitioner, in view of amendment of sub-section (2) of section 2A of the Industrial Dispute Act, 1947 incorporated by amendment of 2010, is answered accordingly. Copy of this award be sent to the Appropriate Government through its Commissioner/ Secretary, Labour Department for information and publication in the Government Gazette.

File after its due compilation be consigned to records.

Announced :

Dated : 15-06-2016.

(Sd.) KOSSAR AHMAD QURESHI,

District and Sessions Judge,  
Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
J&K, Srinagar.



EXTRAORDINARY

REGD. NO. JK—33



**THE  
JAMMU & KASHMIR GOVERNMENT GAZETTE**

Vol. 129] Srinagar, Mon., the 25th July, 2016/3rd Srav., 1938.[No. 16-11

Separate paging is given to this part in order that it may be filed as a  
separate compilation.

**PART II—B**

**Notifications, Notices and Orders by Heads of Departments.**

GOVERNMENT OF JAMMU AND KASHMIR,  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
J&K, SRINAGAR.

Before : Kossar Ahmad Qureshi, Presiding Officer

File No. 527/LC/2010.

Date of Institution : 02-06-2010.

Date of Decision : 27-06-2016.

Aga Syed Mustafa (Assistant Craftsman) S/o Aga Syed Ahmad, R/o Amda  
Kadal, Srinagar.

(Petitioner)

Versus

Managing Director, J&K Handicrafts (Sales and Export) Corporation,  
Srinagar.

(Respondent)

In the Matter of :—        Reference under section 10 of Industrial Dispute Act, 1947.

Appearing Counsel :

For the petitioner : Mr. Shabir A. Budoo, Advocate.

For the respondent : Mr. Tasavar Manzoor, Advocate.

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ORDER/AWARD

The instant reference is a very pathetic case, is having a checkered history because of its pendency in different forums, authorities, this Tribunal and also in Hon'ble High Court for a period of last 33 years. The instant dispute was referred to this Tribunal in the year 1990 and same was earlier decided in the year, 1998, but the petitioner got aggrieved with the said award passed by this Tribunal, preferred a Writ Petition vide SWP No. 1375/98 before Hon'ble High Court of J&K which got finally disposed off in the year 2010 i. e. after a period of 12 years. The Hon'ble High Court quashed the award passed by this Tribunal, with a direction to this Tribunal, to rehear the matter and decide afresh in the light of observations made by it in the above referred SWP No. 1375/98. As such the instant reference is on board for its final disposal.

Record file reveals that pursuant to the directions of the Hon'ble High Court of J&K in judgment dated 6th day of April, 2010 passed in SWP No.1375/98 titled Aga Syed Mustafa V/s. State of J&K and Ors. the Reference File No. 527/L. C. dated 08-02-1990, earlier decided and dismissed as not maintainable, by this Tribunal on 17-06-1998, has been remanded back with direction to rehear a fresh and decide accordingly.

While perusing the judgment passed by Hon'ble High Court, Srinagar in the above mentioned SWP No. 1375/98, the Hon'ble High Court, while

quashing the above referred award, of this Tribunal, has raised several points for consideration :—

- (1) First point that while passing the supra award by this Tribunal, the non-applicability of Clause “bb” of section 2 (oo) of the Industrial Dispute Act, 1947 in the State, has not been looked into.
- (2) Second point whether the conditions incorporated in the order of appointment would be automatic in view of Judgment Titled State Bank of India V/s. Sundara Money (AIR 1976 SC Page 1111).
- (3) Thirdly point that the question of alleged embezzlement and the position of absence before the expiry of term of 18 months, has also remained unlooked by this Tribunal.

In compliance of direction of Hon’ble High Court in the above said SWP No. 1375/98, for rehearing the above referred reference File No. 527/L. C. dated 08-02-1990, in the light of above referred observations made by Hon’ble High court and deciding a fresh, it became necessary to this Tribunal, to rehear the parties and reconsider the whole record with whole material available with the file and also to reconsider the applicability of the provisions of law in this State, as referred earlier, in the above referred award, by this Tribunal.

For deciding afresh, it is imperative to refer the brief facts of the case which are as, that, pursuant to Order. No. JKHC/MCS/82-83/4916/4978 dated 08-10-1982 issued by Respondent Corporation, twenty five persons including the petitioner came to be engaged as Assistant Craftsman on consolidated amount of Rs. 700/- inclusive of allowances per month, for a period of 1½ year, was posted in the advanced Training Centre Aali Kadal, Srinagar, worked therein till 23rd day of July, 1983 and thereafter, was transferred to the Handicrafts Training Centre, Watrihail, Budgam and

worked there, till the closure of the said Centre vide Order No. JKHC/MCS/83-84/869/73 dated 28-10-1983. After the closure of the said Centre, the petitioner along with the other colleagues approached the head office of the Respondent Corporation for further posting, upon which the other colleagues of the petitioner were readjusted, whileas, the petitioner is the only who has been singled out and was not reengaged, constrained the petitioner to make several representations and approached the authorities but no fruitful results and the part of his wages were also withheld. After lost his hope, the petitioner filed a petition before the Conciliation Officer i. e. Assistant Labour Commissioner, District Srinagar (Conciliation Officer) under Industrial Dispute Act, 1947 (hereinafter referred Act) read with J&K Industrial Disputes Rules, 1972, for initiating conciliation proceedings and the Conciliation Officer accordingly initiated the same, by issuing a notice to the Respondent Corporation for causing his appearance on 19-08-1989. However on the said date fixed, the representative of the Respondent Corporation caused his appearance but without any objections and subsequently none have caused appearance on behalf of the Respondent Corporation, after which, the Conciliation Officer opined that the services of the petitioner should not have been terminated arbitrarily without any reason being assigned as the petitioner was in continuous service of the Respondent Corporation for over one year and worked therein for more than 240 days in a calendar year and further opined that by working therein for more than 240 days, a Statutory Right under section 25B and 25F of the Act has accrued to the petitioner. The Conciliation Officer further observed in such proceedings that no proper procedure has been adopted by the Respondent Corporation while dispensing with the services of the petitioner. With these observations, the Conciliation Officer has send a failure report of the instant Industrial dispute of the petitioner, to the State Government for making reference of the said Dispute, to this Tribunal, for adjudication, upon the two issues, which are reproduced as follows :—

- (1) Whether the respondent management of the concerned Corporation was within their rights to arbitrarily terminate the petitioner from his services ?

- (2) If so, whether the petitioner is entitled to reinstatement along with back wages and any other relief in this behalf ?

The record file reveals that the Labour Department, Government of J&K vide SRO No. 54 dated 01-02-1990, made a reference of this “industrial dispute” to this Court/Tribunal, for adjudication, upon the above said two issues within contemplation of clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947. In the reference, the issues specified for being adjudicated upon, are as follows :—

- (1) Whether the action of the aforesaid Management in terminating the services of the aforesaid employee is justified ?
- (2) If not, to what relief the said employee is entitled to ?

Upon receiving the reference by this Tribunal on 08-02-1990, the same has been diarized and numbered as 527/LC dated 08-02-1990. The other side was put to notice whose representative appeared before this Tribunal on 09/04/1992, filed his objections and resisted the claim of the petitioner on various grounds by stating in his objections that the petitioner has no cause of action nor has he any right to challenge his termination because his services were purely temporary basis and only for 1½ year and in view of condition No. 04 of the order of appointment, the Respondent Corporation shall have a right to terminate the petitioner from his services even prior to expiry of said period of 1½ year that too without assigning any reason and without any prior notice. The objections filed by the said representative of the Respondent Corporation further states in his objections that the petitioner has worked only till December, 1983 and thereafter absconded till 24/10/1988 i. e. up to making of application on 24/10/1988 as such the petitioner has no right to claim for reinstatement.

Before adjudicating upon the issues referred to this Tribunal by the Government, this Tribunal gave opportunities to both the parties to lead evidences in support of their claim and counter claims to the extent of

factual aspects i. e. with respect to Factum Probandum and accordingly the petitioner has produced some witnesses and thereafter the respondent employer has also produced some witnesses in support of their objections.

Issue No. 01 :

Whether the action of the Management terminating the services of the petitioner is justified ?

So far as the Issue No. 01 is concerned, without any ambiguity, the petitioner is admitting the correctness of the terms and conditions of the order of appointment of the persons including the petitioner vide Order No. JKHC/MCS/82-83/4916/4978 dated 08/10/1982. The said order of appointment has been passed with the following started para which is reproduced as under :—

“The following candidates are temporarily appointed on contract basis as Assistant Craftsman on the basis of their merit technical experience and are on the consolidated amount of Rs. 700/- (Rupees Seven hundred only) per month inclusive of all allowances for the period of one and a half year and posted in the advanced training Centre as shown below against each”.

Below the above said stated para, there are also some terms and conditions of the appointment, laid down in the supra appointment Order, among which, the most relevant two conditions which touches the merits and demerits of the present case, are reproduced as under :—

Condition No. 04 in the serial reads as follows :—

“The appointment will be for a period of one and half year only (18 months) and is purely temporarily terminable at any time even before the expiry of one and a half year without any formal notice and without assigning any reason thereof”.

Condition No. 07 in the serial reads as follows :—

“The appointee will be bound to execute an Agreement prescribed by the Management for the purposes which interalia, shall include

the terms and conditions mentioned in the Order. In the event of the statement found incorrect, he will be liable for penalty to the extent as prescribed at (6) above”.

The record file reveals that it is admitted fact that the petitioner has, in pursuance of the said order of appointment, joined and worked therein as Assistant Craftsman upto the date of the completion of the training programme and simultaneously closure of the Training centre at Watrihail, Budgam i. e. up to 28/10/1983. However thereafter, the petitioner joined the Head Office and worked therein up to December, 1983 and was waiting for further posting at some other place/centre but was not posted anywhere despite verbal promises made by the Respondent employer in turn was not lateron allowed to remain continue in service in the Head Office of the Respondent Corporation and has been verbally terminated from his services without assigning any reason for the same that too without any prior notice. The petitioner went pillar to post for continuing his service in the Respondent Corporation like other colleagues who were posted some other places/centers but only petitioner was not readjusted at some other place/centre. The record file further reveals that the petitioner has made several verbal as well as formal representations not only to the Respondent Corporation but also to the Secretary, Labour Department and also to the then Chief Minister which shows that the petitioner has not left any corner for redressal of his grievances pertaining to his reinstatement in the Respondent Corporation. From the above, one most important admitted fact that the petitioner has continuously worked in the Respondent Corporation since 08th day of October, 1982 to December, 1983 as admitted by the Respondent in his objections which means that the petitioner has continuously worked therein for 14 months and 24 days i. e. 450 days in total. As such a statutory right has accrued to the petitioner under section 25-B and 25-F of the Industrial Dispute Act, by virtue of which the petitioner is a “protected workman” as such he cannot be terminated/disbanded from his services without following the conditions/provisions of section 25B and 25F of the Act. Now question herearises whether the Respondent Corporation has adopted the set statutory

procedure laid down in supra sections while disbanding the petitioner from his services. The answer is certainly “No” as admitted by the Respondent Corporation in their written objections, for which the Respondent Corporation has given reasons for the same that, in view of condition Para No. 04 of the Order of Appointment, the Respondent Corporation. was not legally bound to give reasons for disbanding the petitioner from his services nor they were bound to give any prior notice to the petitioner before terminating him from his services but inturn stated in their objections that the Respondent employer was at liberty to terminate the petitioner from his services even before expiry of the service contract period which was 1½ years. Now the question here arises as to whether the Respondent employer is within his rights to terminate the petitioner from his services in view of the condition No. 04 of the Order of appointment which is contradictory to the statutory right of the petitioner/employee derived from section 25-B and 25-F of the Act. In response, the considered opinion is that the supra condition No. 04 laid down in the Order of Appointment shall not have overriding effect and shall not prevail upon the statutory Provisions of Sections 25B and 25F of the Act because the legal position is that the “Doctrine of waiver” will not act against the statutory provision nor “Doctrine of estoppel” will apply against the statutory legal right. The law made by the Legislature’s have an overriding effect upon the Administrative Order. The petitioner, on the basis of supra condition No. 04 of the Order of Appointment, cannot be estopped from claiming the statutory legal right derived from section 25B and 25F of the Act nor it can be said that by virtue of supra Condition No. 04 of the Order of Appointment, the petitioner has waived off such legal statutory right derived from section 25B and 25F of the Act which in none the case is permissible under law because the legal position is that any agreement between the parties will not vitiate the statutory provisions. Being so, the law casts duty upon the Respondent Corporation, to fulfill the conditions laid down in section 25B and 25F of the Act, before terminating the petitioner from his services, which the Respondent Corporation has, admittedly, not fulfilled. In addition to it, the retainment of the co-workers of the applicant



in the services of the management also entitles the applicant the similar reference and the treatment at par with his colleagues.

Now coming to the question regarding the applicability of clause (bb) of sub-section 2(oo) of the Act on which basis this Tribunal had earlier opined that the reference and the claim of the petitioner is not maintainable but later when the said impugned award passed by this Tribunal, was later challenged by the petitioner, through the medium of supra SWP No. 1375/98, the Hon'ble High Court of J&K pointed out that while passing the said impugned award by this Tribunal, the non-applicability of clause (bb) of section 2 (oo) of the Act in State of J&K, has not been looked into as such this legal point required adjudication by going through the relevant provisions. The section 2(oo) of the Act is definition of the term "Retrenchment" with clauses (a), (b), (bb) and (c) as its exceptions. The said section 2(oo) with its above said three sub-clauses are reproduced as under :—

[(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include :

- (a) Voluntary retirement of the workman ; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein ;

- (c) Termination of the service of a workman on the ground of continued ill health ;] .

Now after going through the said provision of sub-section 2(oo) of the said Act, it shows that the sub-section 2(oo) has been incorporated in the said Act by way of amendment made by State of Andhra Pradesh but not by the Central Government nor by the State of J&K and inserted the same in the Act by Act 43 of 1953 w. e. f. 24-10-1953 however the Clause bb of sub-section 2(oo) of the said Act has also been incorporated in the said Act by the State of Andhra Pradesh by the Act of 49 of 1984 w. e. f. 18-08-1984. The legal position is that the above referred Amendment made by State of Andhra Pradesh by inserting Sub-section 2(oo) and then by inserting clause bb of sub-section 2(00) of the Act, is not applicable in State of J&K because of the constitutional special status of the State of J&K in view of Article 370 of the Constitution of India and even under the said Article, the powers of the Parliament to enact the laws for the State of J&K are also limited. Only those Central Laws can be made applicable in J&K State which state constituent Assembly can approves but in none the case, any laws enacted by other States of India. Article 245 of the Constitution of India clearly states that Parliament may make laws for the whole or any part of the Territory of India and the legislature of a State may make laws for the whole or part of the State. If the State of Andhra Pradesh has made amendment of the Act by inserting the above said sub-section 2(oo) and then clause bb of the said sub-section 2 (oo) of the Act then under Article 245 of the Constitution of India, the same is only applicable to the subjects of the State of Andhra Pradesh but not in State of J&K. The sub-section 2(oo) and its sub-clause bb cannot be enforced in State of J&K on the ground that a law enacted by one state cannot be directly enforced in another state. As such the insertion of sub-section 2(oo) and also the clause bb of sub-section 2(oo) of the Industrial Disputes Act, 1947 made by State of Andhra Pradesh, is not applicable in State of J&K as such the Respondant employer cannot take benefit of the same while terminating the petitioner from his services without following the provisions

of section 25B and 25F of the Act. Besides that even if the said clause bb of sub-section 2(oo) of the Act would have been applicable in State of J&K but despite of that the instant case is not covered under the said clause bb of sub-section 2(oo) as the petitioner has not been terminated from his services because of expiry of the service contract period or due to efflux of service contract period which under said clause bb of sub-section 2(oo) will not amount to retrenchment because in the instant case, the petitioner was engaged by the Respondant Corporation, for a period of 18 months w. e. f. 08-10-1982 and admittedly, worked therein continuously till December, 1983 that means the petitioner worked continuously therein for a period of 14 months and 24 days and thereafter the petitioner has been terminated from his services which means that the petitioner has been terminated from his services even before the expiry of the said service contract period but so far as the words of the said clause bb THAT “of such contract being terminated under a stipulation in that behalf contained therein”, the same is related to those orders of appointment of workmen in whose orders of appointment, a condition has been laid down for their termination even before the expiry of their service contract period that a condition should have been mentioned in the contract that if such and such will happen even before expiry of the service contract period then in such eventuality the employer has powers under the clause (bb) to terminate the workman from his service even before expiry of the service contract period e. g. if it is laid down in the service contract that the employee has been engaged for a period of two years but if the employer’s establishment is closed down even before expiry of said service contract period of two years, then in such eventuality, the employer has powers under clause (bb) of section 2(oo) to terminate the employee from his service even before expiry of the said service contract period of two years but in such circumstances also, the employer is not exonerated from assigning reasons and prior notice with salary for notice period at pre-termination stage because fulfilling such requirements at pre-termination stage is nowhere excluded in the said Act especially in section 2(oo) of the Act. Dereliction from fulfilling such requirement at pre-termination stage amounts to violation Of not only statutory

provisions but also against the principle of natural justice. The Hon'ble Apex Court in *State Bank of India V/s. Shri N. Sundara Money* (AIR 1976 S. C. 1111) which is three bench judgment of Justice Y. V. CHANDRACHUD, Justice V. R. KRISHNA IYER and Justice A. C. GUPTA in which their Lordships in first part of Para No. 09 of the said Judgment held as under :—

“A break-down of section 2(oo) unmistakably expands the semantics of retrenchment. “Termination.....for any reason whatsoever” are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employees's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualize abuses by employers, by suitable verbal devices, circumventing the armour of section 25F and section 2(oo). Without speculating on possibilities, we may agree that ‘retrenchment’ is no longer terra in cognita but area covered by an expansive definition. It means ‘to end, conclude, cease’. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from section 25F (b) is inferable from the proviso to section 25F (1) (sic) (section 25F (a)?). True, the section speaks of retrenchment by the employer and it is urged that some act of violation by the employer to bring about the termination is essential to attract section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient”.

In another case law, the Hon'ble Apex Court in Ramesh Kumar V/s. State of Haryana at Para No.13 (AIR 2010 SC 683) held as under :—

“It is to be noted that in the case of termination of casual employee what is required to, be seen is whether a workman has completed 240 days in the proceeding twelve months or not. If sufficient materials are shown that workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of section 25F. The High Court failed to appreciate that in the present case appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances, his termination was illegal”.

From the above referred law and also the above referred Judgment of the Hon'ble Apex Court, the conclusion is that in all the cases, it is required that if the workman has continuously worked for 240 days in a calendar year then he/she is a “protected workman” under the Act and his/her services cannot be terminated in any case without assigning reasons and notice with salary for notice period, to be send and paid at pre-termination stage, irrespective of any reason for his/her termination or stipulations laid down in the service contract nor the services of the workman can be terminated automatically due to efflux of time without complying the provisions of section 25B and 25F of the Act. There is no concept of automatic termination by efflux of time without prior notice and reasons but in each and every case in which the right has accrued to the employee under section 25B and 25F of the Act, a notice required under the said provisions is to be served upon the protected workman whose service is to be terminated that too by following the due procedure of law laid down in section 25B & 25F of the Act. As such the petitioner, in the instant case, is a protected workman worked continuously for 14 months and 24 days, was terminated from his services verbally, even before expiry of the service contract, that too without assigning any reason, notice and salary for such notice period, at

pre-termination stage, is in violation of provision of Industrial Disputes Act, is therefore not legally justified termination.

Now coming to the question of involvement of the petitioner in alleged embezzlement during his service is an unestablishment fact and has not been proved by the Respondent employer nor has stated about the said fact in his objection. If at all, it is presumed to be true the respondent have failed to prove such allegations before this Tribunal. Any enquiry for such alleged embezzlement nor any F. I. R. has been registered against the petitioner for such embezzlement. In absence of such material, it cannot be presumed nor deemed to be true on the basis of mere saying at belated stage without any corroboration that the applicant has committed any such offence. So this plea of the respondents has no weightage in the eyes of law. Hence the applicant can not be punished on this account.

The another plea taken by the Respondent that after closure of the centre at Watrihail, the petitioner absconded thereafter and chosen to remain absent from his services and thereafter moved an application in the year 1988 which fact is also not proved by the Respondent because in one breathe the Respondent employer in his objections, has stated that the petitioner remained absent from his services after the closure of the Watrihail Centre and on the other breathe, the Respondent employer in his objections has stated and admitted that the petitioner worked in the Respondent Corporation till December, 1983 i. e. the petitioner worked in the Respondent Corporation even after the closure of the Watrihail Centre. However after that as per the petitioner's stand that he was not allowed to continue his services because of the verbal termination of the petitioner, against which the petitioner knocked every door for his reemployment. The petitioner even approached the then Chief Minister for issuing directions to the Respondent Corporation for his reemployment but without any fruitful results. The said facts have also been reflected by the Conciliation Officer in his failure/confidential report

as such no question of absconding of the petitioner herein arises at all but inturn it is appreciable that since then the petitioner has not lost his hope for his reinstatement despite lapse of long period of 33 years during which the petitioner was pursuing the matter earlier on administrative side for five years and then before Conciliation Officer for 02 years and thereafter before this Tribunal from 1990 to 1998 and then before the Hon'ble High Court of J&K vide SWP No. 1375/98 up to April, 2010 i. e. for 12 years and then again before this Tribunal since the year 2010 as such the petitioner has fought this case for a long period of 33 years which determines that the petitioner was very keen and interested in continuing his services in the Respondent Corporation as such no question of absconding of the petitioner from his services arises at all. Had it been so, then the petitioner would not have fought such a long battle for his reinstatement for such a long period of 33 years. Further the Act, 1947 does not lay any bar of limitation in raising the issue of the dismissal, retrenchment, termination.

In view of the above facts and circumstances, it is clear that the petitioner has rendered services for more than 240 days in calendar year as required under law as such is a protected workman in terms of law. As such statutory obligation is casted upon the Respondent to assign reasons for termination and to give prior notice to the petitioner before terminating his services with advance salary for notice period in view of section 25B and 25F of the Act, which has not been done in the present case but in turn the Respondent has terminated the services of the petitioner in gross violation of the provisions of section 25B and 25F of the Act. Moreso there is nothing sustainable accepting the averment that the petitioner had left the service at his own because the applicant has worked till the winding up of the Waterhail Centre and reported back to the Head Office for further posting. Therefore the Issue No. 01 is decided in favour of the petitioner and against the Respondent. The termination of the petitioner from his services, by the Respondent Corporation without complying the law on the subject is declared

as illegal, invalid, unwarranted and uncalled for and against the principles of natural justice.

The Issue No. 02 is dependent upon the Issue No. 01. Since the Issue No. 01 has been decided in favour of the petitioner and against the Respondent the petitioner is ordered to be reinstated forthwith and since the petitioner is fighting for his reinstatement for the last 33 years before different forums, Tribunal and High Court and gone through trauma of agony, mental depression and financial crises, unemployment the petitioner is entitled to reinstatement with Notional benefits. The Respondents has given a separate treatment to the applicant while regularizing the services of his colleagues employees appointed along with him is clear cut victimization and unfair labour practice. The above observations of the Tribunal are relied upon the Judgement of Hon'ble Apex Court Titled Hindustan Tin Works V/s. Its Employees (AIR 1979 S. C. 75) in which the Hon'ble Apex Court in para No. 09, 10 and 11 held as under :—

“It is no more open to debate that in the field of Industrial Jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of Common Law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with certainty of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously      deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer.



Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period, the workman sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied to back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to be full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted letigative activity of the employer. If the employer terminates the service, the service illegally and the termination is motivated as in this case ; viz. to resist the workman's demand for revision of wages, termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect..... In this very nature of things there cannot be a strait jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage, the Tribunal will exercise its discretion keeping in view all the relevant circumstances".

In another ruling/case law of Hon'ble Apex Court Titled P. V. K. Distillery Ltd. V/s. Mahendra Ram (A. I. R. 2009 S. C. Page 2205) in

which the Hon'ble Apex Court held that Long pending of reference in different Courts will not vitiate the Right of Petitioner/Employee of reinstatement and back wages. However a little bit difference between the facts of the said case and the present case, are that in the above said case law, the facts were that after the termination of the employee in the year 1982, the factory was declared sick and thereafter new management took the charge of the said factory by this time, the Award was passed by the Tribunal/Court with the order of reinstatement and full back wages, the matter reached in High Court. The High Court refused to interfere with the award and subsequently matter reached to Hon'ble Apex Court before whom the employee i. e. Respondent therein did not appeared and the matter was decided in ex parte by the Hon'ble Apex Court with the observations that the issue whether after passing the order of reinstatement of the employee, whether he shall be given full back wages, depends upon the facts and circumstances of each case. As such since in the said case, the factory was declared sick and thereafter new management took over the charge of said factory and more so since the employee did not appeared before the Hon'ble Apex Court as such on these grounds, the order of full back wages passed by Tribunal has been modified by the Apex Court to the extent of 50% back wages but in the present case, the Respondent Corporation has never been declared as sick but in turn is one of the profitable industry of the State Government as the same is dealing with the handicrafts and is related with tourism industry which is the main source of profit to the State Government and moreover the petitioner is fighting for his cause before each and every authority, Tribunal, and Writ Court from the very inception till date shows that the applicant was at the right side fighting for his right and legal cause.

For the foregoing reasons, I hold that in the light of aforesaid reasons, the termination of the petitioner is illegal and is hereby set aside and Respondent Corporation is directed to reinstate the petitioner forthwith notional benefits.

Reference is answered accordingly and an award is accordingly passed in favour of the petitioner and against the Respondent. A copy of award be sent to the appropriate Government through its Commissioner/ Secretary, Labour Department for information and its publication in the Government Gazette.

The file, after due compilation, be consigned to record.

Announced.

Dated 27-06-2016.

(Sd.) KOSSAR AHMAD QURESHI,

Presiding Officer,  
District and Sessions Judge,  
Industrial Tribunal-cum-Labour Court,  
J&K, Srinagar.